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MAY 27 2009
CHAMBERS OF
THEODORE H. KATZ
US MAGISTRATE JUDGE

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May 26, 2009

**VIA HAND DELIVERY**

The Honorable Theodore H. Katz
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, NY 10007-1312

**Re: *Anwar, at al. v. Fairfield Greenwich Ltd., et al.*, No. 09 Civ. 118 (VM)**

Dear Judge Katz:

We represent Madanes Investment & Enterprise Ltd., Carling Investment Ltd., Shimon Laor, and Arie and Dafna Gruber (collectively, the "Fairfield Investor Group"). On May 11, 2009, the Fairfield Investor Group filed a motion in this litigation, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), for appointment of lead plaintiff and lead counsel to pursue claims for Defendants' violations of the federal securities laws, including Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5. A total of three such motions for appointment of lead plaintiff and lead counsel were filed (collectively, the "PSLRA Motions").

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We are in receipt of a letter dated May 21, 2009 and addressed to your Honor from Mark G. Cunha, counsel for the Fairfield Greenwich Defendants. In his letter, Mr. Cunha states that "[o]n May 20, 2009 … counsel for the *Anwar* plaintiffs advised us that they intend to file a Second Consolidated Amended Complaint asserting, *inter alia*, federal securities law claims."

We write to request that, while the PSLRA Motions are pending, the Court not entertain any motion to file, or otherwise permit the filing of, any amended complaint alleging violations of the federal securities laws, for two reasons:

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First, Interim Co-Lead Counsel, who on April 24, 2009 filed a 112-page Consolidated Amended Complaint ("CAC") alleging seventeen counts of state law claims only, have no authority to pursue federal securities law claims in this litigation. To allow them that authority would be both premature and circumvent the PSLRA, which prescribes a very specific procedure for appointment of lead plaintiff and lead counsel. *See* 15 U.S.C. § 78u-4(a)(3)(B). It is the lead plaintiff and lead counsel to be appointed by the Court who have the authority under the PSLRA to pursue federal securities law claims for the class. Three competing movants, one of whom is represented by Interim Co-Lead Counsel, have filed motions for appointment of lead plaintiff and lead counsel pursuant to the PSLRA. These motions have not been fully briefed, and the Court has not yet ruled on them. In short, no lead plaintiff or lead counsel have been appointed to represent the class of securities purchasers here, much less been given authority to pursue their claims. Until the time such lead plaintiff and lead counsel are appointed – which, pursuant to the PSLRA, the Court determines are adequate to represent the federal securities class members' interests, *see* § 78u-4(a)(3)(B) – the Court should not allow the filing of an amended complaint alleging federal securities law claims.

Second, only nine days before alerting Defendants' counsel that they intend to file an amended complaint alleging federal securities law claims, Interim Co-Lead Counsel recounted, in their own motion for appointment as lead plaintiff and lead counsel filed on May 11, 2009 on behalf of certain of the *Anwar* plaintiffs, that they did not include federal securities law claims in the CAC because they "determined that it was not in the best interests of the class to do so." *Anwar* Mem. at 4 (Docket Entry No. 134). The *Anwar* plaintiffs then stated that *if* they were appointed as lead plaintiff and their counsel as lead counsel, they would carefully review the claims and "make a strategic decision whether it is in the class's best interests to assert federal securities claims, or to proceed in some other fashion." They further stated that *if* selected as lead plaintiff, they would "use their judgment in vigorously prosecuting the claims that are most beneficial and likely to provide relief for the Class." *Id.* at 5. In other words, even the *Anwar* plaintiffs recognized that the lead plaintiff appointment must be made first so that the lead plaintiff can then determine how best to proceed. Now, Interim Co-Lead Counsel, in an apparent about face, have notified Defendants that they intend to file an amended complaint alleging federal securities law claims. To allow them to take further action on behalf of the federal securities class will undermine the purpose of the PSLRA. Further, as we will explain in our opposition to the *Anwar* plaintiffs' motion for appointment of lead plaintiff and lead counsel, we believe it clear that the *Anwar* plaintiffs and their counsel cannot be appointed lead plaintiff and lead counsel to pursue Section 10(b) claims.

Accordingly, until adequate lead plaintiff and lead counsel are appointed to represent the interests of those asserting claims under Section 10(b) of the Exchange Act, the Court should not entertain any motion to file, or otherwise permit the filing of, any amended complaint alleging violations of the federal securities laws.

Respectfully submitted,

/DBR

Steven J. Toll

Cc: The Honorable Victor Marrero (via hand delivery)
All Counsel in *Anwar* (via email)

The Court has been advised that the parties have agreed that a Second Amended Complaint will not be filed until the lead counsel issue is decided. Once the Second Amended Complaint has been filed, the parties shall brief the stay issue.

**SO ORDERED**

6/15/09

THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE